

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY SPENCER,

Petitioner,

v.

JUDGE STUART SCHWARTZ, et al,

Respondent.

ORDER

08-cv-202-bbc

Petitioner Larry Spencer, a prisoner at the New Lisbon Correctional Institution in New Lisbon, Wisconsin, has submitted a proposed complaint. He has not included with his complaint payment of the \$350 fee for filing this case. Therefore, I construe petitioner's complaint to include a request for leave to proceed in forma pauperis.

Because petitioner is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. This means that before this court may decide whether petitioner can proceed with his complaint in forma pauperis, he will have to make an initial partial payment of the filing fee. However, under 28 U.S.C. §1915(b)(4), a prisoner may proceed in forma pauperis without making an initial partial payment of the filing fee if the prisoner proves that he has no assets and no means by which to pay an initial partial filing fee. A prisoner is deemed to have no means to make an initial partial payment if he receives no deposits to his account from any

source and if the prisoner has a zero balance in his regular prison account. Even in this circumstance, the prisoner must submit a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his complaint confirming that he has no income. 28 U.S.C. § 1915(a)(2).

Petitioner did not submit a trust fund account statement with his complaint. However, he did submit such a statement recently in connection with another lawsuit filed in this court, Spencer v. State of Wisconsin, 08-cv-17-bbc, which I have copied for use in this case. That statement covers the period beginning July 11, 2007 and ending January 4, 2008. The complaint in this case was submitted on April 4, 2008. That means that the six-month period immediately preceding the filing of *this* complaint is only partially covered by the statement submitted in petitioner's other case. If petitioner submits a trust fund account statement covering the period from approximately January 4, 2008 to April 4, 2008, he will have provided statements covering the full six-month period preceding the filing of his complaint in this case.

From my review of the statement petitioner submitted in case no. 08-cv-117-bbc, I note that it is possible that he has no means with which to make an initial partial payment in this case. That statement shows that petitioner has received \$0 income for the months of September 2007 through December 2007. If petitioner submits a statement that shows that he has received \$0 income for the months of January, February and March 2008, he will not be required to make an initial partial payment of the \$350 filing fee. In that event,

petitioner will still be obligated to pay the \$350 filing fee. 28 U.S.C. § 1915(b)(1). His account will be monitored and the fee will be taken in monthly installments when the funds exist. If, however, petitioner submits a statement that shows that he has been receiving periodic income to his account, I will assess him an initial partial payment of the \$350 filing fee and he will be required to pay the remainder of the fee in monthly installments of 20% of his monthly income. 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner may have until May 12, 2008, in which to submit a trust fund account statement for the period beginning approximately January 4, 2008 and ending approximately April 4, 2008. If, by May 12, 2008, petitioner fails to respond to this order, I will assume that he wishes to withdraw this action voluntarily and, in that case, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 21st day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge